

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

TAG IRA, LLC,

Plaintiff,

vs.

Case No. 2014-659-CB

RESIDENTIAL GROUP 231, LLC, PROPERTY
SOLUTIONS OF MICHIGAN, INC., ALLEN
BOIKE, and STEVEN E. LONDEAU, JR.,

Defendants.

OPINION AND ORDER

Defendant Steven E. Londeau (“Defendant Londeau”) has filed a motion for reconsideration of the Court’s October 3, 2014 Opinion and Order granting, in part, and denying, in part, Plaintiff’s motion for summary disposition.

In the interests of judicial economy the factual and procedural statements set forth in the Court’s October 3, 2014 Opinion and Order are herein incorporated.

Standards of Review

Motions for reconsideration must be filed within 21 days of the challenged decision. MCR 2.119(F)(1). The moving party must demonstrate a palpable error by which the Court and the parties have been misled and show that a different disposition of the motion must result from correction of the error. MCR 2.119(F)(3). A motion for reconsideration which merely presents the same issue ruled upon by the Court, either expressly or by reasonable implication, will not be granted. *Id.* The purpose of MCR 2.119(F)(3) is to allow a trial court to immediately correct any obvious mistakes it may have made in ruling on a motion, which would otherwise be subject

to correction on appeal but at a much greater expense to the parties. *Bers v Bers*, 161 Mich App 457, 462; 411 NW2d 732 (1987). The grant or denial of a motion for reconsideration is a matter within the discretion of the trial court. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

Arguments and Analysis

In his motion, Defendant Londeau contends that Plaintiff accepted the Third Note and that as a result the Third Note replaced the Second Note. The First and Second Notes contain an identical provision governing modifications and amendments:

No Modifications or Amendments; No Waiver. Except as specified herein, this Promissory Note may not be amended, modified or changed, nor shall any waiver of the provisions herein be effective, except only by an instrument in writing signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought. Additionally, a waiver of any provision in one event shall not be construed as a waiver of any other provision at any time, as a continuing waiver, or as a waiver of such provision on a subsequent event. (*See Plaintiff's Exhibits A and E.*)

In his instant motion, Defendant Londeau contends that the Third Note took the place of the Second Note. In support of his position, Defendant Londeau relies on a statement of accounts prepared and executed by Plaintiff (*See Exhibit G to Defendant Londeau's Response to Plaintiff's Motion.*) However, the statement of accounts merely lists the payments it had received from Defendants and did not contain a waiver of its rights to enforce the guaranties at issue in this case and did not provide an agreement to release Defendant Londeau from his personal guaranty. After reviewing the statement of accounts the Court remains convinced that Plaintiff's signature on the statement of accounts does not satisfy the requirements for an amendment, waiver or modification set forth in the First and Second Note and/or the statutory requirements of MCL 566.132. Consequently, Defendant's Londeau's motion must be denied.

Conclusion

For the reasons discussed above, Defendant Steven E. Londeau, Jr.'s motion for reconsideration is DENIED. This Opinion and Order neither resolves the last claim nor closes the case. *See* MCR 2.602(A)(3).

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: November 3, 2014

JCF/sr

Cc: *via e-mail only*

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